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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In re Applications of	)	MM DOCKET NO. 92-170
)	
LIBERTY UNIVERSITY, INC.	)	File No. BPED-911206MB
Channel 210A)	
Lynchburg, Virginia)	
)	
VISION COMMUNICATIONS, INC.	)	File No. BMPED-920414IF
WRXT(FM))	
Channel 212C2)	
Roanoke, Virginia)	

To: Administrative Law Judge
Edward Luton

**MASS MEDIA BUREAU'S COMMENTS ON
PETITION FOR LEAVE TO AMEND**

1. On September 1, 1992, Liberty University, Inc. ("Liberty"), filed a Petition for Leave to Amend. The Mass Media Bureau submits the following comments.

2. Liberty's application for a new noncommercial FM station on Channel 210A at Lynchburg, Virginia, is mutually exclusive with the application of Vision Communications, Inc. ("Vision"), for modification of noncommercial station WRXT(FM), on Channel 212C2 at Roanoke, Virginia. In its amendment, Liberty has provided the residential addresses of the members of its governing board as called for in paragraph 4 of the Hearing Designation Order, 7 FCC Rcd 4928 (1992). Liberty also seeks to amend its application in order to remove the mutual exclusivity with Vision's application.

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3. Liberty proposes to change its channel of operation to 215A. Liberty acknowledges that such a channel change would constitute a major change pursuant to Section 73.3573(a)(1) of the Commission's Rules if made prior to designation. However, it states that Section 73.3522(b)(2) of the Commission's Rules applies to amendments made after designation for hearing. Liberty contends that it has met the good cause criteria of Section 73.3522(b)(2).

4. Finally, Liberty requests a waiver of Section 73.509 of the Commission's Rules because its amendment would cause a prohibited overlap between its 100 dBu contour and Vision's 60 dBu contour in a .36 square kilometer area. Liberty asserts that this overlap area is less than 0.008 percent of the total coverage area of WRXT(FM). Moreover, Liberty states that there is no population residing within the overlap area. Liberty states that a waiver of Section 73.509 in this instance would be consistent with Commission precedent set forth in Educational Information Corporation, 6 FCC Rcd 2207 (1991).

5. For the reasons stated in the Petition for Leave to Amend, the Bureau believes that Liberty has shown good cause for acceptance of its amendment. The "major change" rules do not apply to post-designation amendments. California Broadcasting Corporation, 90 FCC 2d 800, 808 (1982). Moreover, good cause is generally found when a proposed amendment will eliminate the need

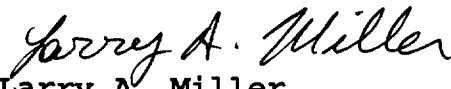
for a hearing. Las Americas Communications, Inc., 5 FCC Rcd 1634 (1990). Amendments to change frequency, such as the instant amendment, have been allowed in other proceedings in order to eliminate mutual exclusivity. See Memorandum Opinion and Order, FCC 89M-2039, released August 7, 1989; Memorandum Opinion and Order, FCC 91M-1428, released April 24, 1991; and Memorandum Opinion and Order, FCC 91M-1861, released June 12, 1991 (copies attached).

6. The Bureau's engineering staff has analyzed the proffered amendment and has concluded that the amendment conforms with the Commission's technical standards except for Section 73.509 of the Commission's Rules. However, Liberty indicates in its Petition that Vision will soon be filing an amendment in which Vision will also be requesting a waiver of Section 73.509 and agree to accept interference from Liberty. In the Bureau's view, comments on Liberty's waiver request should await the filing of Vision's amendment so that a more complete analysis may be made.

7. In view of the foregoing, the Bureau reserves the right to comment on Liberty's waiver request until such time as Vision has filed its proposed amendment.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


Larry A. Miller
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
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September 11, 1992

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 89M-2039

011236

In re Applications of	)	MM Docket No. 89-309
CABRINI COLLEGE	)	File No. BPED-860725MH
Radnor Township, Pennsylvania)	
VILLANOVA UNIVERSITY IN THE	)	File No. BPED-870402KA
STATE OF PENNSYLVANIA)	
Villanova, Pennsylvania)	
BUX-MONT EDUCATIONAL RADIO ASSOCIATION	)	File No. BPED-870514MN
Sellersville, Pennsylvania)	
TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA	)	File No. BPED-870515OE
Philadelphia, Pennsylvania)	
For a Construction Permit for a)	
Non-Commercial Educational FM station)	

MEMORANDUM OPINION AND ORDER

Issued: August 3, 1989;

Released: August 7, 1989

1. Under consideration are the following: Petition for Leave to Amend, filed July 10, 1989, by Cabrini College ("Cabrini"); Petition for Leave to Amend, filed July 10, 1989, by Villanova University in the State of Pennsylvania ("Villanova"); Petition for Leave to Amend, filed July 10, 1989, by Bux-Mont Educational Radio Association ("Bux-Mont"); Joint Motion for Approval of Agreement, filed July 10, 1989, by Cabrini, Villanova, Bux-Mont and the Trustees of the University of Pennsylvania ("Penn"); Petition for Leave to Amend, filed July 24, 1989, by Villanova; Petition for Leave to Amend, filed July 25, 1989, by Bux-Mont; Petition for Leave to Amend and Amendment to Application, filed July 25, 1989, by Penn; and Comments on Joint Motion for Approval of Agreement, filed July 28, 1989, by Mass Media Bureau.

2. The joint agreement proposes that the applications of Cabrini, Villanova and Bux-Mont each be granted, subject to the acceptance of an amendment to each applicant's engineering proposal. An engineering amendment to each of these applications was filed simultaneously with the filing of the joint agreement. In addition, the joint agreement contemplates a grant of Penn's pending application with the result that the coverage area of Penn's existing station, WXPB, will expand.

3. The engineering amendments of Cabrini, Villanova and Bux-Mont propose a change in frequency. Cabrini and Villanova propose identical technical facilities. Cabrini and Villanova, which propose a shared-time operation, seek to amend their applications to propose operation on Channel 206A,

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rather than Channel 203A. Bux-Mont seeks to amend its application to propose operation on Channel 205A, rather than Channel 204A. The applicants contend that a grant of these amendments will provide an aggregate of 2,259,284 people residing in an area of 5,188 square kilometers with the opportunity to receive new non-commercial FM service.

4. The engineering amendments will result in some contour overlap among the applicants. The applicants, therefore, request a waiver of Section 73.509 of the Commission's Rules which prohibits such overlap. The applicants note that the interference will not result in the loss of any present service to any listener. The applicants also note that the Penn proposal involves a relocation of WXPB's transmitter and a sharing with Station WPVI(TV), Philadelphia, of a diplexed antenna. This co-location and diplexing, they contend, will eliminate the interference between WXPB and WPVI(TV), thereby providing additional service to the public.

5. The Mass Media Bureau supports acceptance of the applicants' amendments and approval of the joint agreement and has offered the following comments. Here, the benefit of authorizing new and improved service outweighs the limited interference which will result. Significantly, none of the proposals will result in interference to a non-party to this proceeding, and each of the parties to this proceeding has agreed to accept interference as a condition of receiving a grant. Moreover, as noted by the applicants, no one currently receiving service will lose service as a result of acceptance of the applicants' amendments.

6. Additionally, it is noted that the parties have complied with Section 73.3525 of the Commission's Rules. The documents submitted include declarations from each of the parties asserting that their respective applications were not filed for the purpose of reaching or carrying out the joint settlement agreement. Approval of the agreement is in the public interest because it will eliminate the need for a hearing thereby conserving the resources of the non-commercial applicants and the Commission and further will expedite additional service to the public in the Philadelphia area.

7. In light of the foregoing, the engineering amendments will be accepted and a waiver of Section 73.509 will be granted. The joint agreement will be approved.

8. On July 24, 1989 and July 25, 1989, Villanova, Bux-Mont and Penn filed petitions for leave to amend their applications to provide information called for by the Hearing Designation Order ("HDO"). The Mass Media Bureau has reviewed these amendments and agrees with the applicants that they have met the HDO's requirements.

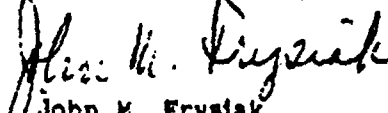
Accordingly, IT IS ORDERED that the Petitions for Leave to Amend, filed July 10, 1989, by Cabrini, Villanova and Bux-Mont ARE GRANTED, and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that a waiver of Section 73.509 of the Commissions Rules IS GRANTED.

IT IS FURTHER ORDERED that the Petition for Leave to Amend, filed July 24, 1989, by Villanova, the Petition for Leave to Amend, filed July 25, 1989, by Bux-Mont and the Petition for Leave to Amend and Amendment to Application, filed July 25, 1989, by Penn ARE GRANTED, and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the Joint Motion for Approval of Agreement, filed July 10, 1989, by Cabrini, Villanova, Bux-Mont and Penn IS GRANTED and the joint agreement IS APPROVED, the application of the Trustees of the University of Pennsylvania IS GRANTED, the applications of Cabrini College, Villanova University in the State of Pennsylvania and Bux-Mont Educational Radio Association, as amended, ARE GRANTED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



John M. Frysiak
Administrative Law Judge

JCH

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-1428

In re Applications of	)	MM DOCKET NO. 90-606
)	
LAKESHORE COMMUNICATIONS, INC.	)	File No. BPED-880406MK
Channel 203)	
Green Bay, Wisconsin)	
)	
CATHOLIC DIOCESE OF GREEN BAY	)	File No. BPED-880303MB
WISCONSIN)	
Channel 201C)	
Green Bay, Wisconsin)	
)	
For Construction Permit for a)	
Non-Commercial Educational)	
FM Station)	
)	
EVANGEL MINISTRIES, INC.	)	File No. BPED-890224MA
Milladore, Wisconsin)	
)	
For Modification of Facilities of)	
Station WGNV(FM))	
Channel 203C1)	
Milladore, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Issued: April 22, 1991

Released: April 24, 1991

1. Evangel Ministries, Inc. (Evangel), Lakeshore Communications, Inc. (Lakeshore), and Catholic Diocese of Green Bay (Catholic) have submitted a settlement package for ruling. It consists of (1) a Joint Request for Approval of Settlement Agreement filed April 3, 1991; (2) a Supplement to that Request filed by Catholic on April 16, 1991; (3) a Petition for Leave to Amend that Lakeshore filed on April 4, 1991; and (4) a Supplement to Petition For Leave to Amend that Lakeshore filed on April 16, 1991.

2. The Mass Media Bureau filed " ... Consolidated Comments on Joint Request for Approval of Settlement Agreement and Petition For Leave to Amend" on April 17, 1991.

Lakeshore's Petition For Leave to Amend

3. The Trial Judge must rule on Lakeshore's April 4, 1991 amendment request first. That request is a condition precedent to considering the April

3, 1991 joint request since the Lakeshore application submitted under the Settlement Agreement is the Lakeshore application as amended.

4. Lakeshore proffers an engineering amendment that will remove the mutual exclusivity among the three applications, and permit all three to be granted.

5. Lakeshore proposes to:

- (a) Change frequency from Channel 203 (88.5 MHz) to Channel 211 (90.1 MHz);
- (b) Increase the station's effective radiated power from 3 Kw to 6 Kw;
- (c) Relocate the transmitting antenna;
- (d) Decrease the height of the Antenna Radiation Center above average terrain (HAAT) and mean sea level (MSL);
- (e) Increase the height of the Antenna Radiation Center above ground level (AGL); and
- (f) Decrease the elevation on the top of the antenna supporting structure (including antenna, all other appurtenance and lighting) above ground level (AGL) and mean sea level (MSL).

6. The Mass Media Bureau says Lakeshore's engineering proffer complies with the Commission's technical rules; that good cause has been demonstrated for amending; and " ... that the Presiding Judge has jurisdiction to grant Lakeshore's request to amend from Channel 203 to 211" and the grant the amended application.¹

¹ Thus the Bureau takes the position that 47 CFR 73.3522(c) doesn't apply to this postdesignation amendment. That subsection provides:

"Notwithstanding the provisions of paragraph (b) of this section, and subject to compliance with the provisions of §73.3525, a petition for leave to amend may be granted, provided it is requested that the application as amended may be removed from the hearing docket and returned to the processing line. See §73.3571."

Ruling on The Amendment

7. Lakeshore's petition for Leave to amend will be granted and the engineering amendment will be accepted. Accepting the amendment will permit a universal settlement of this proceeding. So good cause is shown.

8. The only real question is whether after permitting Lakeshore to change frequencies from Channel 203 to Channel 211 the Trial Judge has jurisdiction over a "Channel 211 application."²

9. The Mass Media Bureau says the Trial Judge does have jurisdiction over Lakeshore's application as amended since the Commission's rule do not prohibit him from exercising such jurisdiction and " ... in two comparable hearing proceedings, the respective presiding judges have approved channel changes ..."

10. The Bureau's position will be credited. So Lakeshore's Petition For Leave to Amend will not only be granted, the Trial Judge will assume jurisdiction over the Lakeshore application as amended; i.e., the application for Channel 211 (90.1 MHz).

The Joint Request For Approval of Settlement Agreement

11. Evangel, Lakeshore and Catholic have settled their differences. Evangel's and Catholic's applications are not mutually exclusive. Lakeshore's application (prior to amendment) for Channel 201C in Green Bay, Wisconsin was mutually exclusive with both Evangel's and Catholic's applications. But by amending to Channel 211 (90.1 MHz), Lakeshore has removed that mutual exclusivity and all three applications can be granted.

Ruling

12. The Joint Request will be granted, and the accompanying Settlement Agreement will be approved. The parties have submitted the appropriate documents. See Oak television of Everett, Inc. 53 RR 2d 995 (1983). None of the three applicants filed their applications for an improper purpose.

13. Approval of the agreement will close out the case; speed up the start up of the two new noncommercial educational FM service that Station WGNV provides Milladore, Wisconsin. The public interest is thus furthered.

² The Hearing Designation Order (56 F.R. 4291 published February 24, 1991) only gave the Trial Judge jurisdiction over Channels 203, and 201C.

SO, the Petition For Leave to Amend that Lakeshore Communications, Inc. filed on April 4, 1991 IS GRANTED and the accompanying amendment to BPED-880406MK IS ACCEPTED;

The Joint Request For Approval Of Settlement that Evangel Ministries, Inc., Lakeshore Communications, Inc., and Catholic Diocese of Green Bay filed on April 3, 1991, IS GRANTED; and the accompanying Settlement Agreement IS APPROVED;

Lakeshore Communications, Inc.'s application (BPED-880406MK) as amended IS GRANTED;

Catholic Diocese of Green Bay, Wisconsin's application (BPED-890303MB) IS GRANTED;

Evangel Ministries, Inc.'s application (BPED 890224MA) IS GRANTED; and

This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Walter C. Miller", is written over the typed name.

Walter C. Miller
Administrative Law Judge

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 91M-1861
4850

In re Applications of	)	MM DOCKET NO. 90-654
)	
THE CEDARVILLE COLLEGE	)	File No. BPED-881214MN
)	
OHIO UNIVERSITY	)	File No. BPED-890922MA
)	
For Construction Permit)	
for a New Noncommercial)	
FM Station on Channel 220A)	
in Chillicothe, Ohio)	

MEMORANDUM OPINION AND ORDER

Issued: June 10, 1991 ; Released: June 12, 1991

1. Under consideration are the following related pleadings: "Joint Petition for Approval of Settlement Agreement" filed April 17, 1991, by The Cedarville College (Cedarville) and Ohio University (University); "Statement for the Record" filed April 30, 1991, by Cedarville and University; "Petition for Leave to Amend" filed May 14, 1991, by Cedarville; "Supplement to Joint Petition for Approval of Settlement Agreement" filed May 14, 1991; and "Mass Media Bureau's Comments on Joint Petition for Approval of Settlement Agreement and Petition for Leave to Amend" filed by the Bureau on May 23, 1991.

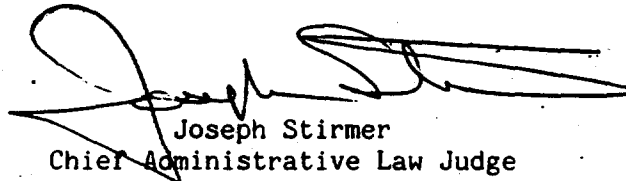
2. Cedarville and University have entered into an agreement to resolve this proceeding in a manner whereby both applications can be granted. Specifically, in its petition for leave to amend, Cedarville seeks to amend its application to specify FM Channel 211 and to relocate its antenna site. Such amendment, if accepted, will resolve the mutual exclusivity presently existing between the Cedarville and University applications. In this connection, Cedarville presently serves the Chillicothe area with an FM translator on Channel 219, which can no longer operate once service commences on Channel 220. Thus, a grant to Cedarville of its amended application for Channel 211 will permit Cedarville to (1) maintain continuity of its service in the area, and (2) improve and expand its listening audience by reason of service from a full-power station. The amendment proffered by Cedarville has been reviewed by the Mass Media Bureau and has been found to be in compliance with the Commission's technical rules. Moreover, because the amendment is a post-designation amendment, the Commission's major change rules do not apply. California Broadcasting Corporation, 90 FCC 2d 800, 808 (1982). Under the circumstances of this proceeding, Cedarville has shown good cause for the acceptance of its amendment, and such amendment will be accepted.

3. The agreement between Cedarville and University, which has been submitted for approval, provides for the payment to Cedarville by University of \$4,500. In addition, the agreement provides that the commencement of operation of University's station will be coordinated with the commencement of operation of Cedarville's station on Channel 211. In support of the agreement, the applicants have complied with the rules governing agreements of this nature. Specifically they have demonstrated that approval of the agreement will serve the public interest, and that neither application was filed for the purpose of reaching or carrying out a settlement agreement. Thus, the agreement will be approved.

Accordingly, IT IS ORDERED that the "Petition for Leave to Amend" filed by The Cedarville College on May 14, 1991, IS GRANTED, and the amendment, specifying Channel 211 and a relocation of the antenna site, IS ACCEPTED;

IT IS FURTHER ORDERED that the "Joint Petition for Approval of Settlement Agreement" filed by The Cedarville College and Ohio University on April 17, 1991, and supplemented on April 30, 1991, and May 14, 1991, IS GRANTED; the agreement IS APPROVED; the application of The Cedarville College, as amended (File No. BPED-881214MN), IS GRANTED; the application of Ohio University (File No. BPED-890922MA), IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Stirmer
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 11th day of September, 1992, sent by regular United States mail, U.S. government frank, copies of the foregoing "Mass Media Bureau's on Petition for Leave to Amend" to:

Vision Communications, Inc.
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